



## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **46 CFR Part 356**

**[Docket Number MARAD-2014-0043]**

**RIN 2133-AB86**

### **Requirements to Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of proposed rulemaking, request for comments.

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**SUMMARY:** The Maritime Administration (“MARAD”) is soliciting public comments on amendments to its regulations which implement new requirements regarding certain large fishing industry vessels set forth in the American Fisheries Act of 1998, as amended by the Coast Guard Authorization Act of 2010 (“CGAA”) and the Coast Guard and Maritime Transportation Act of 2012 (“CGMTA”). The proposed revisions to the regulation adds two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, eliminates the 15-day application deadline for vessels whose fishery endorsements have become invalid, limits fishery endorsement eligibility for certain large fishing industry vessels, and eliminates certain exemptions for specific vessels that were deleted in the CGMTA.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. MARAD will consider comments filed after this date to the extent practicable.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2014-0043 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search MARAD-2014-0043 and follow the instructions for submitting comments.
- E-mail: [Rulemakings.MARAD@dot.gov](mailto:Rulemakings.MARAD@dot.gov). Include MARAD-2014-0043 in the subject line of the message.
- Fax: (202) 493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- Hand Delivery/Courier: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you fax, mail or hand deliver your input we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying and electronic filing.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information

provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled **Public Participation**.

**FOR FURTHER INFORMATION CONTACT:** You may contact Michael C. Pucci, Attorney Advisor, Division of Maritime Programs, Maritime Administration, at (202) 366-5320. You may send mail to Michael C. Pucci at Maritime Administration, 1200 New Jersey Avenue, SE, MAR 222, W24-217, Washington, DC 20590-0001. You may send electronic mail to [Michael.Pucci@dot.gov](mailto:Michael.Pucci@dot.gov). If you have questions on viewing the Docket, call Cheryl Collins, Program Manager, Docket Operations, telephone: (800) 647-5527.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 602(a) of the CGAA added two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements found at 46 U.S.C. 12113(d): (1) Replaced or rebuilt vessels and (2) fish tender vessels. CGAA also eliminated the 15-day application deadline for vessels whose fishery endorsements had become invalid. Exemptions from the large fishing industry vessel restrictions are found in our regulations at 46 CFR 356.47.

In addition, section 601(b)(2) of the CGAA repealed section 203(g) of the AFA, which exempted particular vessels from the ownership requirements of 46 U.S.C. 12113. These exempt vessels are currently listed in our regulations at 46 CFR 356.51.

Section 307 of the CGMTA added further restrictions on large vessels under 46 U.S.C. 12113(d) by limiting those vessels from participating in the non-AFA trawl catcher processor subsector.

Accordingly, MARAD finds it necessary to update its regulations under 46 CFR part 356 to reflect these amendments to the AFA and 46 U.S.C. 12113.

### **Public Participation**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue, SE, Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final rule (assuming that one is issued), MARAD will consider that comment as an informal suggestion for future rulemaking action.

For access to the docket to read background documents, including those referenced in this document, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590. The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at <http://www.regulations.gov>, keyword search MARAD-2014-0043.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

### **Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

### **Rulemaking Analysis and Notices**

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures. Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O.13563 (76 FR 3821, January 18,

2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is “significant,” and therefore subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities. (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.

MARAD has determined that this notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This rulemaking will not result in an annual effect on the economy of \$100 million or more. It is also not considered a major rule for purposes of Congressional review under Pub. L. 104-121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

#### Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

#### Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

#### Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### Environmental Assessment

We have analyzed this rulemaking for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the

categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

#### Executive Order 13211 (Energy Supply, Distribution, or Use)

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

#### Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing “economically significant” rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this rulemaking is not economically significant, and will cause no environmental or health risk that disproportionately affects children.

#### Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

#### Executive Order 12630 (Taking of Private Property)



This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### International Trade Impact Assessment

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

#### Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

#### Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate,

or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

#### Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking proposes to update the regulations with two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, removes certain exemptions relating to specific vessels, and adds restrictions on large vessels by limiting those vessels from participating in the non-AFA trawl catcher processor subsector. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

#### **List of Subjects in 46 CFR Part 356**

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Maritime Administration proposes to amend 46 CFR part 356 as follows:

**Part 356-REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION**

**1. The authority citation for part 356 continues to read as follows:**

AUTHORITY: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; 49 CFR 1.66.

**2. Revise § 356.47(b) to read as follows:**

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel –

(i) is either a rebuilt vessel or replacement vessel under section 208(g) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-627);

(ii) is eligible for a fishery endorsement under this section; and

(iii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-625 et seq.) is neither participating in nor eligible to participate in the non-AFA trawl catcher processor

subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2887); or

(3) The vessel is a fish tender vessel that is not engaged in harvesting or processing of fish.

**3. Revise § 356.47(c) to read as follows:**

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that

(i) The regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105-277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's Authority; and

(ii) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Public Law 105-277; 112 Stat. 2681-625 et seq.), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catch processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2887)).

**4. Remove § 356.51(a) through (d) and redesignate § 356.51(e) through (f) as § 356.51(a) and (b), respectively.**

By Order of the Maritime Administrator

Dated: June 3, 2014.  
**Christine Gurland,**  
*Acting Secretary,*  
*Maritime Administration.*

**Billing Code 4910-81-P**

**[FR Doc. 2014-13282 Filed 06/09/2014 at 8:45 am; Publication Date: 06/10/2014]**